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8
9 Attorneys for Defendant Western Express,
10 Inc.

11

12 **UNITED STATES DISTRICT COURT**
13 **DISTRICT OF ARIZONA**

14 Ye'nari Moses, individually,

15 No.

16 Plaintiff,

17 **NOTICE OF REMOVAL**

18 v.

19 Western Express, Inc., a corporation; John
20 Does 1-5; Jane Does 1-5; Black
21 Corporations 1-5; and White Partnerships
22 1-5,

23 Defendants.

24 Defendant Western Express, Inc. (“Removing Defendant”), by and through
25 undersigned counsel, hereby files the following Notice of Removal of this action, currently
26 pending in the Superior Court of the State of Arizona, County of Maricopa, Case No.
27 CV2022-001133, to the United States District Court for the District of Arizona, pursuant
28 to 28 U.S.C. §§ 1332, 1441, and 1446. As grounds for removal, Removing Defendant states
as follows:

29 **I. JURISDICTION**

30 This Court has original jurisdiction over this action pursuant to 28 U.S.C. §
31 1332 because the amount in controversy exceeds \$75,000.00 and there is complete
32 diversity of citizenship. *See* 28 U.S.C. § 1332(a).

33 Plaintiff claims personal injuries as a result of Removing Defendant’s alleged
34 liability. Plaintiff alleges she “suffered injuries which caused her pain, suffering, distress,
35 mental and emotional anguish and anxiety, and a general decrease in her quality and

1 enjoyment of life" and further "incurred expenses for medical care, and may incur expenses
2 for future medical care." Plaintiff has also certified this case as Tier 2, signaling the
3 damages are worth between \$50,000 and \$300,000. Defendant has requested Plaintiff's
4 counsel confirm whether her damages are less than or greater than \$75,000.00. To date,
5 Plaintiff's counsel has indicated that she cannot confirm that the damages sought are less
6 than \$75,000 as Plaintiff is still treating. Accordingly, Defendant rely on Plaintiff's
7 allegations in her First Amended Complaint to support the amount in controversy sought
8 exceeds \$75,000.00.

9 According to the First Amended Complaint and upon information and belief,
10 Plaintiff Ye'nari Moses is domiciled in Maricopa County, Arizona, where she presumably
11 intends to remain. Accordingly, Plaintiff is considered a citizen of Arizona.

12 Removing Defendant Western Express, Inc., is incorporated in Tennessee
13 with a principal place of business in Nashville, Tennessee. Removing Defendant Western
14 Express, Inc. is therefore considered domiciled in Tennessee and a citizen of Tennessee.

15 Plaintiff filed her First Amended Complaint on March 8, 2022 removing
16 Defendants Gary Eugene Mack and Jane Doe Mack as Defendant Mack is deceased.
17 However, even if Plaintiff hadn't dismissed these Defendants, they were residents of
18 California and domiciled there, and therefore were citizens of California prior to Defendant
19 Mack's death.

20 Pursuant to 28 U.S.C. § 1446(b)(2)(A), all defendants "who have been
21 properly joined and served must join in or consent to the removal of the action" for all
22 actions removed based on diversity of citizenship. Removing Defendant, who is the only
23 Defendant who has joined and been served in this lawsuit, consent to the removal of this
24 action.

25 **II. COMPLIANCE WITH LRCIV 3.6(B)**

26 Pursuant to LRCiv 3.6(b), the following documents are attached as exhibits
27 to this Notice:

28

<u>Exhibit No.</u>	<u>Documents Included:</u>
1	Civil Cover Sheet (JS-44)
2	Supplemental Civil Cover Sheet
3	Maricopa County Superior Court Docket as of March 10, 2022
4	<ul style="list-style-type: none"> • Plaintiff's Complaint filed 1/28/2022 • First Amended Complaint with AZTurboCourt proof of filing 3/8/2022
5	<p>Service Documents:</p> <ul style="list-style-type: none"> • Summons and Affidavit of Service re Defendant Western Express, Inc. • Email from Plaintiff's Counsel's office to Defense Counsel with a copy of the First Amended Complaint and proof of filing
	<p>Answers</p> <ul style="list-style-type: none"> • (None)
	<p>State Court orders terminating or dismissing parties</p> <ul style="list-style-type: none"> • (None)
	<p>Notices of Appearance</p> <ul style="list-style-type: none"> • (None)
	<p>Pending Motions, Responses and Replies</p> <ul style="list-style-type: none"> • (None)
6	<p>Remainder of the State Court Record</p> <ul style="list-style-type: none"> • Maricopa County Superior Court Civil Cover Sheet • Summons for Gary Eugene Mack • Summons for Jane Doe Mack • Plaintiff's Certificate of Compulsory Arbitration • Notice of Filing Notice of Removal

III. ANSWERS OR ORDERS TERMINATING OR DISMISSING PARTIES

As of this date, no Defendant has filed an answer, and the state court has not entered any orders terminating or dismissing parties.

1 **IV. OPERATIVE PLEADING**

2 The above-captioned case commenced when Plaintiff filed a Complaint in
3 Superior Court in and for Maricopa County, on January 28, 2022. *See* Complaint and First
4 Amended Complaint filed on March 8, 2022, attached hereto as **Exhibit 4**.

5 **V. SERVICE OF PROCESS**

6 According to the documents filed, the Removing Defendant was served with
7 process of the Complaint on February 8, 2022, attached as **Exhibit 5**.

8 **VI. TIMELINESS AND UNANIMITY OF REMOVAL**

9 Under 28 U.S.C. § 1446(b)(1), a notice of removal shall be filed within thirty
10 (30) days after the receipt by the defendants, through service or otherwise, of a copy of the
11 initial pleading setting forth the claim for relief upon which such action or proceeding is
12 based.

13 This Notice of Removal is filed within thirty (30) days of when the original
14 Complaint was served on Removing Defendant Western Express, Inc. and, therefore, is
15 timely. *See* 28 U.S.C. § 1446(b)(1).

16 **VII. STATUS OF PENDING MOTIONS**

17 Not applicable.

18 **VIII. VERIFICATION OF FILING ALL PLEADINGS AND OTHER**
DOCUMENTS FROM STATE COURT FILINGS

19 A Notice of Filing Notice of Removal, a true and correct copy of which is
20 included in **Exhibit 6**, is being filed this same date in the Superior Court for the State of
21 Arizona, in the County of Maricopa, Case No. CV2022-001133, on behalf of Western
22 Express, Inc.

23 True and correct copies of all pleadings and other documents filed in the state
24 court proceeding have been filed herewith as described above.

25 **WHEREFORE**, Removing Defendant hereby request that the above action
26 now pending in the Superior Court in and for Maricopa County, Arizona, be removed to
27 this Court.

1
2 DATED this 10th day of March, 2022.
3
4

5 JONES, SKELTON & HOCHULI, P.L.C.
6

7 By _____
8

9 Clarice A. Spicker
10 40 N. Central Avenue, Suite 2700
11 Phoenix, Arizona 85004
12 Attorneys for Defendant Western Express,
13 Inc.
14
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16 **CERTIFICATE OF SERVICE**

17 I hereby certify that on this 10th day of March, 2022, I caused the foregoing
18 document to be filed electronically with the Clerk of Court through the CM/ECF System
19 for filing; and served on counsel of record via the Court's CM/ECF system.
20

21 Timothy G. Tonkin
22 Montana Thompson
23 PHILLIPS LAW GROUP, P.C.
24 3101 N. Central Ave., Suite 1500
25 Phoenix, AZ 85012
26
27

28 /s/R.L. Harrington